PHE

App F IX 4

Previous References

1948-49 Vol I

File No 1-48

Serial Nos 2

Later References

M 37-50 (18, 19)

GENERAL AND REVENUE SECRETARIAT

Serial Nos

Part B for Vol 1 48

SUBJECT

Criminal appeal No 24 of 1947 on the file of the District Judge and Station Officer

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Vide order on note sheet 7 ante
Letter No L 6747/Genl 7-40-2 dt 20.12-48
The President — We could take
action the proposal

1189
111

From the president Municipal Commn Civil Stn Bangalore
A2-835-47 dated 24 5 48

States that the Municipal Commissioner has at its meeting dated 30-4-48 resolved that a reference be made to Govt, against the order of the District Judge, setting aside the order of the president Municipal Commissioner to construct garage in No 6 A Sundara Murthy Road, and requests that the orders of the District Judge be stayed pending the disposal of the petition

1) one Sri Surya Kameswara had under Section 143 of the Bangalore Municipal Law preferred an appeal in the Court of the District Judge, Civil Station - Bangalore against the order of the respondent president of the Municipal Commission - Civil Station Bangalore - whereby,

he had refused to sanction the proposed construction of a garage to the appellants' premises No 6 A - Sundara Murthy Road, Cox Town, Bangalore

2) ~~The~~ It was seen that the grant of the licence was refused on the ground that it would affect the existing building line on the street and would reduce the limited open space in front thereby not satisfying the building rules

3) The Hon'ble District judge ~~on~~ on appeal has set aside the refusal order of the president to construct a garage in question

4) For reasons stated in para 2 of the P & D the president - Municipal ~~Commissioner~~ on appeal is of the opinion that the order of the learned District judge

is against Law and the facts of the case

5) He has therefore requested the Court to call for the proceedings, under Section 143 (3) of the Bangalore Municipal Law and to set-aside the orders of the learned Judge

Extract

xxx

"(3) The Resident may call for a report of the proceedings in any case in which it appears to him that there has been an illegality or material irregularity in the ... or any such resolution, notice or order as aforesaid and may pass such orders thereon, as he thinks fit."

6) In the present case it is seen that all the points mentioned by the Municipal President have already been considered by the Court in passing the judgement in the

6838/ccc 7189/III

Appeal case at a doubtful if Gal-
can issue a stay order in the case at
this stage The Municipal Commissioner may
perhaps file a revision petition, if deemed
necessary The Law Branch will be
consulted on the above points

27/5/48 R. 28 5 48

1) Please put up to Hon'ble Municipal Commissioner
for 29 5 48

(for reference & action when no reply required from)

8) The book is put up

9) This may be transferred to the Law Branch for further action

31/5

Law Secy 31/5

Law Secy W[illegible]

10/8 31/5

GENERAL & REVENUE SECRETARIAT 1 JUN 1948 LAW BRANCH

6838/Law

Submitted 11)

This is a similar Case to one that is being dealt with in another file bearing D No 6837/Law

In this case also the President Municipal commission, Civil Station Bangalore, has requested Govt to exercise powers under S 143(3) of the Bangalore Municipal Law 1897 and call for the proceedings in Municipal appeal No 24947 in the file of the District Judge Civil Station, Bangalore, and examine the case This is purely an administrative matter

12 The file may perhaps be returned to the R S & Branch

ADM 1/6 COM 1/6

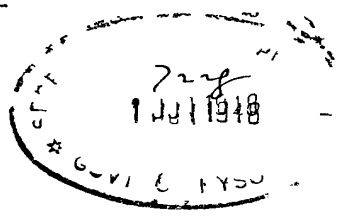
13) This is purely an administrative matter The powers exercisable under Sec 143(3) into Bangalore Municipal

6838 Law

711 Jud

one executive in relation this
has to be dealt with in the
administrative secretariat

Law Secy) fr 1/6



14) If the circumstances mentioned
in S 143 cl 3 are present the records
can be called for by Govt & consumed
thereafter orders passed in this administrative sect

Pvt Secy
WC) 3/6 fr 3/6

4/6 fr

15 The history of the case has
been explained at paras 1 to 6 of the notes supra

16) Under Section 143 (3) of the Bangalore
Municipal Law Government may call for the
records, if there has been an illegality or
material irregularity in the issue of any
such prohibitory notice or order

17 (b) The Advocate General will be consulted
to as to whether this is a fit case for

7189

the Government to intervene and call for the connected proceedings from the Municipal

7/6/48 18) The Advocate-General may be consulted on the matter, if necessary.

8/6/48

19) If approved, the Advocate General will be consulted as proposed

Notes & Orders to put up

with a copy of the above memorial

Letter to the Advocate-General for opinion 8/6

THE MINISTER FOR CITY MUNICIPALITIES AND MUZRAIS
No 2686
Dt 9-6-48

20) The Advocate-General 9/6/48 may be got an early opinion as proposed

16/7/48

8/7/48

21) Forwarded with Compliments to the Advocate-General in connection with the above memorial for favour of opinion at his early convenience.

Forwarded 20/7/48

U O No 19 D 19/7/48

with a copy of the 17/1 Law for 1774 8

Forwarded 17/7/48

No Dr 21 of 48-49
dt 24-8-48

ML 7189

Retransmitted Dr

22) I am of opinion that the powers of the District Judge and Asst Sessions are concurrent and of anything done by the Asst Sessions Judge subject to the orders of the District Judge (vide my opinion in a similar case in regard to Bangalore) ML Ethiraj 28/8/48

ML 7190 V 935 Sent on 27/8/48

25/10

23) Submitted with reference to para 20 supra. An extract of the notes (4 sheets) in file No ML 935 containing the opinion of the Advocate General is kept below flag K

Dfr 26-8-48

Pr 26-8-48

Pl bring up with the other file

for 26/8/48

For orders refer para 20 supra (vide also linked file)

Rec Legal for 27/8/48

8

27/8

I have passed orders in a civil case that I cannot interfere the same holds good in this case also

9/12/48

Extract of the notes & orders in file No ML 7190 of 1935 - Appeal No 23 of 47 N Dasappa Vs Resident, ML Commissioner Civil Station Bangalore

Opinion of the Advocate General S 23 & 24

Section 143 (3) empowers the Resident to pass such orders as he thinks fit in respect of any such prohibition notice or order as aforesaid" the words such and aforesaid are underlined by me "Prohibition" "notice" and order occur in 143 (1) in clauses (a) (b) and (c) respectively and they refer to the acts of the Commissioner & therefore indicates that the Resident may revise the acts of the Commissioner so can the District Judge by way of appeal under Section 143 (2)

Section 143 (2) says that no such prohibition, notice or order shall be

liable to be called in question
otherwise than by such appeal"
But as Section 143 (3) occurs later
the powers of the Resident remain
notwithstanding

At best it can be said
that the powers of the District
Judge and the Resident are
concurrent and the Resident
has no power to call in
question the orders of the District
Judge

(Sd) S R Ethirajulu Nadar
Advocate General
23-8-48

"Extract"

Vide order passed on No L 6747/me
7-48-2 S/ 20 12 48 on file Secretary's No
935/me/48 49 Secretary's proposal

S-23/12/48

Office of the Municipal Commission,
Civil Station, Bangalore,
dated the 24th May 19[illegible]

No A 2-835/47 with one judgment copy and 1 enclosure

From

The President, Municipal Commission,
Civil Station, Bangalore

To

The Secretary to the
Government of His Highness the Maharaja of Mysore,
Revenue Department, BANGALORE

Sir,

Order of the District Judge, Civil Station, Bangalore, in Municipal Appeal No 24 of 1947 Suryakanthamma Vs President, Municipal Commission (Appeal against the order of the President, Municipal Commission, refusing sanction to construct a garage at No 6-A, Sundaramoorthy Road)

26/5/

I have the honour to state that the Municipal Commissi at its meeting held on the 30th April 1948 resolved (copy of the Municipal Commission s resolution enclosed) that a reference be made to the Government against the order of the District Judge, setting aside the order of the President, Municipal Commission, to construct a garage in No 6-A, Sundaramoorthy Road I also enclose the certified copy of the District Judge's order

Enc I

Enc II

2 I submit that for the reasons stated belou the order of the learned District Judge is against law ana the facts of the case

(1) The refusal order in question uas issued under sectior 83(1) (e) of the Bangalore Municipal Law after careful examination of the facts and on the recommendation of the Health Committee, as the construction of the garage, if permitted would affect the existing building line of the street and would also reduce the limited space in front

(2) The learned Judge ought to have held that if the construction uere permitted it would offend section 83(1)(e) of the Bangalore municipal Law

(3) The learned Judge's observation that because other constructions applied for uere sanctioned (these did not contravene any building laus) the garage also ought to have been sanctioned is unconvincing

(4) The learned Judge ought to have seen that uhen the buildings abut on a street only that this condition is applicable and not uhen the neighbouring buildings are constructed almost close to the conservanc lane as urongly observed by the learned Judge

(5) The learned Judge has erred in holding that the Municipality should postulate the line of buildings The line of neighbouring buildings is a question of fact and not to be postulated by the Municipality

(6) That the buildings abut on a street is not disputed and that the proposed construction of the garage would go beyond the line of the neighbouring buildings is also not disputed

(7) If the view of the learned Judge be accepted Section 83(1) (e) would become nugatory

3 I request therefore that under section 143(3) of the Bangalore Municipal Law, the proceedings may kindly be called for by the Government and the order of the learned Judge be set aside and the order of the Municipality refusing sanction confirmed

4 I also request that the order of the learned Judge be stayed pending the disposal of the petition as the party is likely to proceed with the work on the basis of the learned Judge's order

I have the honour to be,
Sir,
Your most obedient servant,

President, M C

MVL
24-5-48

Enc.I.

Municipal Commission's resolution dated the 30th April 1943 (Ordinary Meeting)

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21 Consideration of the question of filing a revision petition against the order of the District Judge, in Municipal Appeal No 24 of 1947 (Suryakanthamma Vs President, Municipal Commission) setting aside the refusal order of the President, Municipal Commission, to construct a garage in No 6-A, Sundaramoorthy Road

Recommended

Resolved that a reference be made to the Government against the order of the District Judge, in Municipal Appeal No 24 of 1947 (Suryakantamma Vs President, Municipal Commission) setting aside the refusal order of the President, Municipal Commission, to construct a garage in No 6-A, Sunda orthy Road

(C R No /1947)

(Sd). N Puttarangasuamy,

President C

" Copy "

President, M C

MVL
24-5-48

21

BEFORE THE DISTRICT JUDGE,

CIVIL STATION, BANGALORE

Dated This 18th day of March 1948

Present P C Ramakrishna Iyengar Esq B A L B

District Judge

Municipal Appeal No 24 of 1947

Appellant	Respondent
P Suryanarayanamma	President Municipal Commission, Civil Station Bangalore

O R D E R

This is an appeal under Section 143 of the Bangalore Municipal Law against the order of the respondent-President of the Municipal Commission Civil station Bangalore dated 4-12-1947 whereby he had refused to sanction the proposed construction of a garage to the appellant premises No 6-A Sundaramurthy Road Co Town Bangalore the reason for the refusal to sanction the construction of the garage having been stated in the order to be that it will affect the existing building line of the street

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and will reduce the limited open space in front

her by not satisfying the building rules.

In the objection statement filed on behalf of

the respondent in the appeal by him counsel the

same reason for refusal was repeated and it was

claimed that the alignment of the building could be

regulated by the respondent under sections 82 and 83

of the Bangalore Municipal Law, and that if the

construction of the proposed garage for the building

premises of the appellant was permitted it would

offend Rule 20 of Byelaw No. 44 of Chapter III

3 Now section 82 of the Bangalore Municipal Law

contemplates the case of any building or part of

building already existing projecting beyond the

regular line of a street either existing or determined

on for the future or beyond the front of the building

on either side thereof and in the event of such building

or part thereof later being entirely or in greater

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part ... down or ... down or ... for ... any
in ... events does ... empower the Municipal
Commission by notice to require such building part,
... be ... result ... be set back ... or towards the
said regular line or the front of the adjoining
buildings and that provided ... must have to
add the portion of the land left by so setting back
to ... street ... however ... should ... a
condition precedent to such addition of the land to
the street ... should to make full compensation to the
owner for any damage he may sustain in consequence
of his building or any part thereof being set back
and sub-rule (...) of the ... section provides that the
Commission may ... on such terms as it may think fit allow
any building to be ... forward for the improvement of
the line of the street ... is obvious, therefore
that neither the sub-rule of ... section 62 nor rule 62
can have any application to the present case of the

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appellant, so that, it could only be under section 83 of the Bangalore Municipal Law that the respondent could not all claim to have acted in the present case and it has even been specifically urged in the respondent's objection statement that it was by virtue of rule 20 of Byelaws under section 83 of the law that the respondent had claimed to act in the present case. I must say that rule 20 of the Byelaws which is headed "area of site built upon can properly have no reference to the garage which the appellant seeks to put up when it is admitted the respondent has sanctioned all other portions of the building premises that are now proposed to put up at the same time. The only possible provision that may at all be invoked to lend even a plausible support for the action of the respondent in refusing sanction to the application for the construction of the proposed garage could be clause (e) of section 83

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Sub-section (1) which says that where any person
intending to erect or re-erect his building has
given notice of his intention to the Commission the
Commission may refuse to sanction the building or
sanction the building subject to any written direct-
ions which the Commission may deem fit to issue in
respect of the line of frontage with neighbouring
buildings if the building abuts on the street' but
properly construed even this clause can have no
application to the present case of the appellant
for in the first place must be determined what
the directions the respondent - municipal Commission
may properly deem fit to issue in respect of the
line of frontage with the neighbouring building
if the building abuts on the street and the
circumstances in which it could validly deem fit to
issue directions in the matter should postulate the
existence of the line of frontage of neighbouring

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build in a relatively to an building abutting on the street and the co-existence of all two circumstances only arise in the case contemplated in Section 82 of the Bangalore Municipal Law whereunder the Municipal Commission may either set back the line of a building which had fallen down and which has to be re-erected so as to conform to the front of the building on either side and if the front of the building on either side should be needlessly further removed from the line of the street which could be prescribed by the municipality as the regular line of a street then the commission under sub-rule 2 of the Section 82 of such ter s as it may think fit allow those adjoining buildings to be set forward in the improvement of the line of the street and it certainly does not stand to any reason that because of the accident of the neighbours on either side having put up their

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buildings far backwards fro[illegible] li[illegible] of th[illegible] stre-et the o/i r o the in ervenin site who wish s to put up th building o[illegible] his si[illegible] should also be ordered to fall back so that th frontage of his building may be in a lin wi h such buildings of the n ighbour: which ma happ n to recede from the line of the stre-t so far back as in s me cases it may well b o h verge of th con rvancy line of front ge with th neighbouring buildings if the buildings about on s r et" contemplated by clause (2) of S ction 83 of the Bangalore Municipal Act can ther fore applied only in thos cases where the buildings abuts o s r eet and the buildin s could be properly be said to abut on the street only when the foundations of their external wall along the street are located less than 1½ feet from the ed e of th street including th arcin since und r the n ddi n " Locat ion of th Building' by Rule o of the building Bylaws it is prohibited that no new buildin s

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shall have foundations of the external wall situated relatively as distanced to the street line

4 For all the above reasons I allow the appeal and setting aside the order of the respondent refusing permission to the appellant for the construction of the garage direct not to permission or sanction be issued with only such directions as are properly necessary and justifiable under the building By laws and the provisions of the Bangalore Municipal Law The appellant will also get costs and her counsel's fee which I fix at Rs 10/-

Dictated to the stenographer transcribed by him and pronounced by me this 18th day of April 1948

Sd/- B C Ramakrishna Iyengar

District Judge

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BRangasvamy

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GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

No L6747/mu7-48 2
2nd + 3 books

General and Revenue Secretariat

Dated Bangalore 20-12- 1948

FROM

The Secretary to the Governm nt of His Highness the Maharaja of Mysore
General Department

To

The President,
Municipal Commission,
Civil Station, Bangalore

SUBJECT Municipal appeals Nos 23 and 24 of 1947 on the file of the District Court, Civil Station, Bangalore

Sir,

With reference to the correspondence ending with your letter No A2-2644 47 dated 6th November 1948 nd your letter No A2 835/47 dated 24th May 1948 on the above subject I am directed to state that section 143(3) empowers the Resident (Now the Government of Mysore) to call for a report of the proceedings in any case in which it appears that there has been an illegali or material irregularity in the issue of any such prohibition, notice or order by or from the Commission under the provisions of Section 143(1) ~~Clause~~ Clauses (a) and (b) and (c) and pass such orders thereon as may be thought fit The words Prohibition", "Notice" and Order" occurring in Section 142(1) clauses (a),(b) and (c) respectively refer to the acts of the Commission Hence the Resident (Now the Mysore Government) may revise the acts of the Commission and similarly the District Judge also by way of appeal under clause (2) of the said Section a power enjoyed almost concurre ly by both the authorities

Section 143(2) lays down that no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal nd notwithstanding this, the power of the Government to call for a report of the proceedings etc remains so far as it refers to the acts of the Commi sion in view of the sub-section (3) occurring later, but not to call in question or revise the orders passed by the District Judge Government therefore regret that they cannot interfere in the matter at this stage

The records are herewith returned

1) R Dis 1507/1946)
2) R Dis 997/1946)
3) R Dis C 1329/46)

The records are herewith returned

Yours faithfully,

For Secretary to Government,
& General Department